BRIEF IN SUPPORT OF PETITION FOR CERTIORARI.

I.

Opinion Below.

The opinion of the Supreme Court of Michigan is dated February 24, 1944, and is found on pages ..... of the record; and the decree of that court based on its opinion is dated May 5th, 1944.

The opinion of the Supreme Court of Michigan is officially reported in 308 Mich. 86 (13 N. W. (2d) 217).

The Supreme Court of Michigan is the highest court and the court of last resort in Michigan (Article VII, Secs. 1 and 4 of the Constitution of Michigan; Michigan Statutes Annotated, Vol. 1, Article VII, Secs. 1 and 4).

II.

A statement of the jurisdiction of the Supreme Court of the United States is set forth in the petition.

III.

A statement of the facts, the questions presented and the reasons relied upon for the issuance of the writ will be found in the petition.

IV.

ARGUMENT.

It is the position and contention of petitioner that only a Federal Court has jurisdiction to determine title to and ownership of whiskey in bond; and, we respectfully urge that all the applicable Federal statutes, rules and regulations, and the authorities interpreting such statutes, rules and regulations, support that position and sustain such contention.

It is provided by statute (28 U. S. C. A. 747; Revised Federal Statutes, Sec. 934) that,

> "All property taken or detained by an officer or other person, under authority of any revenue law of the United States, shall be irrepleviable, and shall be decreed to be in the custody of the law, and subject only to the orders and decrees of the courts of the United States."

We respectfully assert that the language of this statute is so clear and unambiguous that it requires no argument in its application to the case at bar to effectively dispose of the instant controversy wholly in favor of petitioner. Admittedly the whiskey in question is in the exclusive custody and control of the Collector of Customs for the Port of Detroit, and will so remain until all the duties assessed and levied thereon have been fully paid. We urge, therefore, that such whiskey is taken and detained by an officer under the authority of the revenue law of the United States.

The leading case of *Harris* v. *Dennie*, 3 Peters, 293 (28 U. S. 292), fully supports our position that the Superior Court of Grand Rapids was wholly without jurisdiction of the 799 cases of whiskey then and now in bonded storage.

Harris v. *Dennie*, 3 Peters 293, *supra*, was construed by the Attorney General of the United States precisely as we contend. See Opinions of the Attorneys General, Vol. 19, p. 101, February 24, 1888, and Vol. 21, p. 73, October 28, 1894.

In *Taylor* v. *Carryl*, 20 Howard 596 (61 U. S. 583), this Court held (p. 596):

> "* * *. From their arrival in port the goods are in legal contemplation in custody of the United States. An attachment of such goods presupposes a right to take the possession and custody and to make such possession and custody exclusive. If the officer attaches upon mesne process he has the right to hold the possession to answer the exigency of the writ. The act of Congress recognizes no such authority and admits of no such exercise of right."

To the argument there advanced that the United States might hold for the purpose of collecting duties and the sheriff might attach the residuary right subject to the prior claim, the court said:

> "The United States have nowhere recognized or provided for a concurrent possession or custody by such officer."

In *Covell* v. *Heyman*, 111 U. S. 176, the sole question presented was whether property in the custody of a United States marshal held by him pursuant to a levy made by him was subject to the orders or decrees of a State court.

This court held that the property so held by the marshal was not subject to any orders or decrees of a State court. So, too, then is the whiskey in the case at bar not subject to any orders or decrees of a State court.

One of the leading cases upon the question that only a Federal Court shall have jurisdiction of property taken or detained by any officer under authority of any revenue law of the United States is *Galveston, H. & S. A. Ry. Co.* v. *Terrazas,* 171 S. W. 303 (Texas). This opinion cites both *Harris* v. *Dennie,* 3 Peters 293, *supra,* and *Covell* v. *Heyman,* 111 U. S. 176, *supra,* in support of its conclusion. In that case Terrazas sued the railway company to recover the title and possession of certain bundles of hides. It was alleged that the hides had been introduced into the United States from Mexico, and were then in the possession of the railway company whose purpose it was to transport the same out of the state and beyond the jurisdiction of the court. The hides were in the defendant's possession as a carrier, for transportation in bond, and plaintiff stated that he was willing and able to pay any import duties which might be due on the hides, and also offered to enter into bond to protect the railway company or the Government against loss of any kind arising by reason of the detention of said hides in the possession of the company under injunction. A preliminary injunction was asked and granted. The railway company appealed from the order granting the injunction upon the ground that the hides were in the custody of the law, being taken and detained by defendant under authority of the revenue laws of the United States, and were subject only to the orders and decrees of courts of the United States having jurisdiction.

The reviewing court held that the ground for appeal was well taken, and that the language of the statute was plain. The court stated that the status of goods in bonded warehouses was quite, if not wholly, analogous to goods transported in bond, and that the United States Treasury Department regards property in a bonded warehouse as in no wise amenable to process of State courts, and in support of such conclusion made reference to Treasury Department Decision No. 19340.

The opinion in *State* v. *Intoxicating Liquors*, 103 Atl. 257, cites *Galveston, etc., R. R. Co.* v. *Terrazas*, 171 S. W. 303, *supra*, is an authority for the proposition that so long as merchandise is in customs bond such merchandise is still under government control. The reviewing court in this decision also stated that while the goods remained in a bonded warehouse they were in the actual custody and exclusive possession of the Government.

We quote from the opinion (p. 259):

> "While, therefore, these goods remained in the bonded warehouse in Chicago, they were in the actual custody and exclusive possession of the government, which possession could not be surrendered, except on exportation, or under a decree of the United States court (Customs Reg. Sec. 731), until all duties and charges were paid (*U. S.* v. *De Visser*, (D. C.) 10 Fed. 642; *Pattison* v. *Dale*, 196 Fed. 5, 115 C. C. A. 639; *Hartranft* v. *Oliver*, 125 U. S. 525, 528, 8 S. Ct. 959, 31 L. Ed. 813; *Guesnard* v. *L. & N. R. R.*, 76 Ala. 457). This rule was recognized by this court in *Peabody* v. *Maguire*, 79 Me. 584, 12 Atl. 630, where it was held that there could be no actual attachment by a state officer of goods held in bond, although, of course, the consignee, as having the general property in the goods, subject to the lien, could be held as trustee under our garnishee or trustee process."

In *Pattison* v. *Dale*, 196 Fed. 5, the court approved *State* v. *Intoxicating Liquors*, and stated that such property is so exclusively held and dominated by the Government that not even creditors could seize it through attachment or other processes.

In *Applybe* v. *United States*, 33 F. (2d) 897, the syllabus, which is substantially a condensed recitation of the entire opinion, reads as follows:

> "Though court may have a measure of discretion respecting procedure in exercising power conferred by Rev. St. Sec. 934 (28 U. S. C. A., Sec. 747), providing that property taken by any officer or other person under authority of revenue laws shall be deemed in custody of law and subject to orders, and decrees of federal courts have jurisdiction, court must acquire personal jurisdiction of person or officer having custody of property in controversy by some recognized means, such as an order to show cause."

This authority is but another illustration of the consistent line of authorities which hold without deviation that property taken or held by any officer or person under the authority of the revenue laws of the United States is subject only to the orders and decrees of a Federal court.

It is noteworthy to further observe that the interpleader action was not a contest between a bailor and a bailee, but was a contest between the bailor, its assignee, the bailee, and an entire stranger, to determine title to and ownership of whiskey in bonded storage and in the sole and exclusive custody of a Collector of Customs of the United States. This simple recitation of facts, we assert, discloses the lack of jurisdiction in the trial court, and that only a Federal court could enter an order or decree that would be binding on all the parties and dispose of all the rights of all the litigants.

Pursuant to Art. 288 of the Customs Regulations of the United States, petitioner, as consignee, became the owner of all the whiskey in question. That section of the Customs Regulations reads as follows:

> "All merchandise imported into the United States shall be held to be the property of the person to whom the same is consigned; and the holder of a bill of lading duly endorsed by the consignee therein named, or, if consigned to order, by the consignor, shall be deemed the consignee thereof.

It thus appears that pursuant to this provision of the Customs Regulations petitioner became the sole and exclusive owner of the whiskey.

Treasury Decision 45614 states:

> "Section 483 and section 485 (d) of the tariff act of 1922, as well as the corresponding sections (also 483 and 485 (d) of the tariff act of 1930), fixed the ownership of imported merchandise in the consignee and specifically designated who shall be considered the consignee. As there is no other provision of law dealing with the question of ownership of imported merchandise for customs purposes no one other than the consignee as defined in the statutes mentioned is entitled to recognition as the owner of such merchandise."

The customs rules and regulations of the Treasury Department provide that where an outright sale is not made the owner of the merchandise must execute a form of declaration different than that executed in the instant case by Southard & Co., as is disclosed by Art. 274 of the Customs Regulations of the United States. For the convenience of your Honors we quote subsection (6):

> "If the merchandise is shipped other than in pursuance of a purchase or an agreement to purchase, the

value of each item, in the currency in which the transactions are usually made, or, in the absence of such value, the price in such currency that the manufacturer, seller, shipper or owner would have received, or was willing to receive, for such merchandise, if sold in the ordinary course of trade and in the usual wholesale quantities in the country of exportation."

An examination of the two consular acknowledgments executed by Southard & Co. (Original R. 544 and 545) disclose that Southard & Co. did not comply with the quoted section of the Customs Regulations for the simple reason that there was an outright sale, and, therefore, no necessity for compliance therewith.

In *McGoldrick* v. *Gulf Oil Corp.*, 309 U. S. 414, the court said (p. 426):

"Article 942 of the Customs Regulations of 1931 provides that merchandise in bonded warehouse is not subject to levy, attachment, or other process of a State court * * * and that imported goods in bonded warehouse are exempt from taxation under the general laws of the several States. These regulations, continued in Customs Regulations of 1937, Article 940, appeared as Article 731, Regulations of 1915, and Article 850 of Regulations of 1923. They were thus in force when the Tariff Act of 1930 was adopted and were incorporated by reference, cf. *McCaughn* v. *Hershey Chocolate Co.*, 283 U. S. 488, 492, by the provisions of Sections 309, 311, already noted, which also adopted the earlier provisions of Sec. 1351, Title 26, U. S. C. R. S., Sec. 3433, and declared that articles manufactured from imported materials in bonded warehouses should be placed there under regulations prescribed by the Secretary of the Treasury."

We have here a finding by the honorable Court that mer-

chandise, in the instant case whiskey, in a bonded warehouse is not subject to any process of a State court.

In *Giles* v. *Newton*, 21 F. (2d) 484, the court approved the regulations of the Treasury Department (p. 486) which provides that "All merchandise imported into the United States shall be deemed and held to be the property of the person to whom the same is consigned." The opinion and decree of the trial court, affirmed by the Supreme Court of Michigan, is plainly contrary to this express regulation of the Treasury Department. The court further held (p. 484) that "The regulations of the Treasury Department prescribing the methods to be followed in making entry have the force and effect of law," and cites numerous authorities in support of such pronouncement.

In *Shapiro* v. *Lyle*, 30 F. (2d) 971, 973, the court likewise held that the rules and regulations of the Treasury Department have the force and effect of law.

In *Chippas* v. *Valltos*, 123 F. (2d) 153, and *Ruemmelli* v. *Cravens*, 74 Pac. 908, it was expressly held that a person to whom was issued a license could not make use of such license as agent, or otherwise, for some other person.

This case, we believe, is of the utmost importance to the Federal Government, and particularly to the Treasury Department. The decision of the Supreme Court of Michigan, if it be allowed to become a precedent, affects, at least indirectly, the efficient control by the United States over merchandise in customs bond. Persons, individual and corporate, who have issued to them the highly prized Basic Permit will find that the decision of the Supreme Court of Michigan, is it to be not reversed, will provide a "bootlegging" substitute for such Basic Permit. If the decision

of the Supreme Court of Michigan is permitted to become a precedent we will find an interpretation of the Federal statutes and customs rules and regulation by not only Federal courts but by the various courts of each of the States of the Union—resulting in a most confusing situation. It is submitted that the public interest will be promoted by a prompt determination by this court that the provisions of 28 U. S. C. A. 747, which provide that "all property taken or detained by an officer or other person, under authority of any revenue law of the United States, shall be irrepleviable, and shall be decree to be in the custody of the law, and subject only to the orders and decrees of the courts of the United States" means precisely what it says, and that no State court may infringe upon the jurisdiction so conclusively restricted to Federal courts.

CONCLUSION.

Under these facts and authorities it appears that the Supreme Court of Michigan committed error in affirming the opinion and decree of the Superior Court of Grand Rapids by holding that a State court had jurisdiction of the subject matter of the interpleader action.

The decision of the Supreme Court of Michigan is contrary to the applicable decisions of this Court, the Federal statutes, and customs rules and regulations.

The case at bar is of vital importance not only to petitioner, but also to all other persons, corporate and individual, holding a so-called Basic Permit, and also to the Government of the United States.

The decision of the Supreme Court of Michigan and the subsequent decree based thereon are erroneous and should be reversed.

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